

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLETE REO HART,

Plaintiff,

No. CIV S-04-1424 MCE DAD P

vs.

CALIFORNIA MEDICAL FACILITY,  
et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Before the court is plaintiff's amended complaint.

Plaintiff was advised in the court's July 1, 2005 order that the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff was also advised that he must clearly identify his constitutional claims and must allege in specific terms how each named defendant is involved in the claimed constitutional deprivation. Plaintiff has failed to follow these directives in his amended complaint. Therefore, the court will dismiss the amended complaint and provide plaintiff with one final opportunity to clarify his constitutional claims and to provide sufficient allegations with respect to the involvement of each named defendant.

1 Below, the court will also provide plaintiff with the legal standards applicable to  
2 each of the claims which he is apparently attempting to pursue.

3 DEPRIVATION OF PROPERTY

4 Plaintiff alleges that he was asked to be an informant and to provide information  
5 to prison officials regarding illegal drug dealings within the California Medical Facility. He  
6 alleges that he provided such information to defendants correctional officer Park and CCI Stubbs,  
7 and had \$100 withdrawn from his trust account for use in a drug sale as part of his efforts.  
8 Plaintiff claims that he then requested a stop payment on the \$100 withdrawal but his request was  
9 not honored. Plaintiff apparently seeks the return of these funds.<sup>1</sup> This dispute over the loss of  
10 funds is not cognizable. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir.1994) (holding that  
11 deprivation of a prisoner's property fails to state a claim under section 1983 because California  
12 state law provides an adequate post-deprivation remedy); see also Hudson v. Palmer, 468 U.S.  
13 517, 533 (1984). Should plaintiff elect to file a second amended complaint, he should not  
14 attempt to renew this claim.

15 FALSE RULE VIOLATIONS

16 Plaintiff alleges that defendant Lt. Roszko found plaintiff guilty of rule violations  
17 "that were false, lies, and fraud, involving inmates, staff, doctors, and officers throughout the  
18 institution." (Am. Comp., at 8<sup>2</sup>.) According to plaintiff's allegations, defendant Cry fraudulently  
19 rejected plaintiff's appeals. (Id. at 9.) In his second amended complaint, plaintiff must explain  
20 the nature of the rule violations in question, provide factual allegations to support his contention  
21 that the disciplinary actions were false and fraudulent, and explain the disposition of the rule  
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23 <sup>1</sup> The court is skeptical of plaintiff's contention that funds from his trust account were  
24 being used as part of informant activities on his part being carried out at the direction of prison  
officials.

25 <sup>2</sup> The pages of plaintiff's amended complaint are not numbered in numerical order and  
26 begins with a page labeled "6". Therefore, the court will refer to the pages of the amended  
complaint in numerical order, beginning with page one for the first page.

violations as well as whether he lost time credits or other privileges. To adequately state a due process claim under the Fourteenth Amendment, plaintiff must identify the protected liberty interest and the procedural protections he was not provided. Plaintiff is advised that while inmates retain certain due process rights in prison disciplinary hearings, Wolff v. McDonnell, 418 U.S. 539, 563-71 (1974), state laws and prison regulations that contain merely procedural requirements, even if mandatory, do not give rise to a constitutionally cognizable liberty interest. Toussaint v. McCarthy, 801 F.2d 1080, 1098 (9th Cir. 1987). Moreover, the United States Supreme Court has held that state regulations give rise to a liberty interest protected by the Due Process Clause of the federal constitution only where the regulations pertain to "freedom from restraint" that "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995).

#### FAILURE TO PROCESS INMATE GRIEVANCES

Plaintiff alleges that on several occasions he attempted to use the grievance process but that his grievances were not processed, were lost, went unanswered or were denied. This claim is not cognizable because "inmates lack a separate constitutional entitlement to a specific prison grievance procedure." Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)). In addition, the regulations that establish California's inmate grievance system merely procedural requirements which cannot form the basis of a constitutionally cognizable liberty. Washington v. Woodford, No. C 05-2889 SI(PR), 2005 WL 3096116, at \*3-4 (N.D.Cal., Nov. 14, 2005) (citing Smith v. Noonan, 992 F.2d 987, 989 (9th Cir.1993) and Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir.1996)). Plaintiff should not attempt to renew this claim in any second amended complaint filed with the court

#### MAIL TAMPERING

Plaintiff claims that on a regular basis his outgoing mail has been returned because it was misaddressed, and that he has had problems receiving his magazines and legal mail. To the extent that plaintiff may be attempting to raise a claim that he is being denied

1 access to courts, he must also allege facts demonstrating that he suffered an actual injury. Lewis  
2 v. Casey, 518 U.S. 343, 351 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977); Vandelft v.  
3 Moses, 31 F.3d 794, 796 (9th Cir. 1994). “Actual injury” means a “specific instance in which an  
4 inmate was actually denied access to the courts.” Sands v. Lewis, 886 F.2d 1166, 1171 (9th Cir.  
5 1989).

### 6 CONSPIRACY

7 Plaintiff contends that for 46 years, there has been a “conspiracy against my  
8 rights[.]” (Am. Compl. at 10.) It may be that plaintiff is thereby attempting to state a claim that  
9 he has been victimized by an unlawful conspiracy. Plaintiff is advised that in order to prevail on  
10 a conspiracy claim under § 1983, a plaintiff must allege and prove some deprivation of a  
11 constitutional right which resulted from the alleged conspiracy. See Woodrum v. Woodward  
12 County, Okla., 866 F.2d 1121, 1126 (9th Cir. 1989). “A conspiracy occurs only when the parties  
13 have reached ‘a unity of purpose or a common design and understanding, or a meeting of minds  
14 in an unlawful arrangement.’” William Inglis & Sons Baking Co. v. ITT Continental Baking  
15 Co., 668 F.2d 1014, 1055 (9th Cir. 1981) (quoting American Tobacco Co. v. United States, 328  
16 U.S. 781, 809-10 (1946)). Thus, plaintiff must allege facts demonstrating that there was an  
17 agreement by the defendants to violate his constitutional rights. See Woodrum, 866 at 1126;  
18 Fonda v. Gray, 707 F.2d 435, 438 (9th Cir. 1983). While it is not necessary to allege that each  
19 participant in a conspiracy knew the exact parameters of the plan, they must at least share the  
20 general conspiratorial objective. See Fonda, 707 F.2d at 438; see also Margolis v. Ryan, 140  
21 F.3d 850, 853 (9th Cir. 1998). In his second amended complaint, plaintiff must provide more  
22 detailed factual allegations in support of any such claim. A broad statement that a conspiracy has  
23 existed for 46 years is not sufficient.

### 24 IMPROPER DEFENDANTS

25 In the court’s July 1, 2005 order, plaintiff was advised that the “Trust Account  
26 Office” and “Mailroom Representatives” were not proper defendants in this action because the

1 court could not determine if they were one or more persons and because the description provided  
2 was insufficient to effect service. In his amended complaint, plaintiff has again named these  
3 same defendants. Plaintiff is advised that should he rename these defendants in his second  
4 amended complaint, the court will recommend their dismissal. In addition, plaintiff has named  
5 the California Department of Corrections as a defendant. An action against this agency is not  
6 cognizable. See Alabama v. Pugh, 438 U.S. 781, 782 (1978) (suit against state agency is barred  
7 by the Eleventh Amendment).

8 LEAVE TO AMEND

9 If plaintiff chooses to file a second amended complaint, he must allege facts  
10 demonstrating how the conditions complained of have resulted in a deprivation of plaintiff's  
11 constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the second  
12 amended complaint must allege in specific terms how each named defendant is involved. There  
13 can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection  
14 between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362  
15 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,  
16 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in  
17 civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir.  
18 1982).

19 In addition, plaintiff is informed that the court cannot refer to a prior pleading in  
20 order to make plaintiff's second amended complaint complete. Local Rule 15-220 requires that  
21 an amended complaint be complete in itself without reference to any prior pleading. This is  
22 because, as a general rule, an amended complaint supersedes the original complaint. See Loux  
23 v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files a second amended complaint, the  
24 prior pleadings no longer serve any function in the case. Therefore, in a second amended  
25 complaint, as in an original complaint, each claim and the involvement of each defendant must  
26 be sufficiently alleged.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's amended complaint, filed on July 14, 2005, is dismissed.

3 2. Plaintiff is granted thirty days from the date of service of this order to file a  
4 second amended complaint that complies with the requirements of the Civil Rights Act, the  
5 Federal Rules of Civil Procedure, and the Local Rules of Practice; the second amended complaint  
6 must bear the docket number assigned this case and must be labeled "Second Amended  
7 Complaint"; failure to file a second amended complaint in accordance with this order will result  
8 in a recommendation that this action be dismissed.

9 3. The Clerk of the Court is directed to provide plaintiff with the court's form  
10 complaint for a § 1983 claim.

11 DATED: May 30, 2006.

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14 DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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